IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 193 of 1988

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

RAMNIKLAL R. SHAH - Petitioner(s)

Versus

ADDL. COLLECTOR (ULC) & 1 - Respondent(s)

==========

Appearance :

MR JR NANAVATI for Petitioner(s) : 1,
MR SIRAJ GORI, AGP for Respondent(s) : 1 - 2.

==========

CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 22-23/02/2006

ORAL JUDGMENT

1.In the present petition, the petitioner Shri Ramniklal Rupchand Shah has challenged the public notice issued by the Additional Collector, Urban Land Ceiling, Rajkot in January 1988 by which certain plots situated

within the city of Rajkot were sought to be put to auction.

2. Short facts leading to the present petition are that the petitioner Ramniklal Rupchand Shah had filled in form under sub-section (1) of section 6 of the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter to be referred to as “the said Act”) on 25th September 1976. In the said declaration, he had disclosed to the Authorities that he is holding plots Nos.12, 13, 14 and 51 of survey No.398 of Rajkot. It is the case of the petitioner that the said form has not been finalised by the authorities and till filing of the petition, the authorities had not passed any final order thereon.

3. In the meantime, the petitioner came across a public notice issued by the respondents in January 1988 for sale of plot Nos.12 paike, 13 and 14 of survey No.398 of Rajkot. It is stated in the petition that upon inquiry, the petitioner came to know that the said plots have been declared as surplus land and are acquired by the Government under sub-section (3) of section 10 of the said Act. It is the case of the petitioner that being the holder of the said land, which the petitioner had declared as his holding in the

declaration under sub-section (1) of section 6 of the said Act before the Authorities, it was not open for the State Government to auction the same since the declaration made by the petitioner was not yet finalised.

4. It is the averment made by the petitioner in the petition that the procedure as required under sections 8, 9 and 10 of the said Act has not been followed with respect to plot Nos.12 paike, 13, 14 and 51 of survey No.398 before vesting the same in the Government. The petitioner therefore, challenged the public auction declared by the State Government. By way of amendment, the petitioner sought to bring further factual averments on record. It is contended that the brother of the petitioner Shri Amrutlal Rupchand Shah had also made a separate declaration before the authorities and the petitioner was never given an opportunity to show that the plots in question did not belong to Amrutlal Rupchand Shah. In the nutshell, these are the averments on the basis of which challenge to the auction is sought to be sustained.

5. Initially, affidavit in reply dated 9th April 2002 came to be filed by the Competent Authority. It was stated in the said affidavit that the order was passed on 20th

December 1982 declaring an area of 1207.08 sq. meters as excess vacant land. The notification under section 10(1) of the said Act was issued on 15th March, 1983 and the same was published in the official gazette of 31st March 1983. Notification dated 12th September 1985 under section 10(3) of the said Act was published in the official gazette on 3rd October, 2005 and notice under section 10(5) of the said Act was issued on 13th May 1986 and was duly served on the holder of the land. Eventually, possession of the land in question was taken over by the Government on 14th October 1986 in presence of panch witnesses. Even order for payment of compensation under section 11 of the said Act was passed on 17th July 1987. It is contended that the property is of Shri Amrutlal Rupchand Shah as shown in revenue record.

6. An additional affidavit came to be filed on 4th March,2004 by the Competent Authority. In the said affidavit, it was stated, inter alia, that Shri Amrutlal Rupchand Shah had filed form under section 6(1) of the said Act in his individual capacity and declared certain land as his land holding. The disputed survey numbers were not indicated therein. From the copies of the documents submitted by the

declarant, however, it was found that said Shri Amrutlal Rupchand Shah was actually holding additional lands which included plot Nos.12, 13, 14, 23 and 51 of survey No.398 of Rajkot, besides other lands. It is stated that the said plots are shown in the individual name of Shri Amrutlal Rupchand Shah. This is also borne out from the partition deed dated 6.10.1969 which was registered before the authorities on 18.7.1972. It is stated that on the basis of the said partition deed, the land in question belonged to Shri Amrutlal Rupchand Shah and not to the petitioner and the petitioner has no right, title or interest in the land in question.

6.1.It is further stated that accordingly a draft statement under sub-section (3) of section 8 of the said Act was issued and served on Amrutlal Rupchand Shah. However, no objection came to be raised opposing the draft statement. The same was finalised under section 9 of the said Act by the order dated 20th December 1982. It was also served on the declarant (Amrutlal Rupchand Shah). No further steps were taken by him to challenge the said order. Eventually, therefore, after following the procedure required under sub-sections (1), (3) and (5) of section 10 of the said

Act, possession of the land in question was taken over on 14.10.86. Eventually, an order was also passed for payment of compensation under section 11 of the said Act.

6.2.It is further stated that though the petitioner had filled in form indicating that plot Nos.12, 13, 14 and 51 of survey No.398 of Rajkot are HUF properties of which the petitioner has one-fourth share, none of the plots are shown in the name of the petitioner or his father or ancestors. The properties stand in the exclusive name of the brother of the petitioner Shri Amrutlal Rupchand Shah. It is further stated that there are no documents in the Government record to show that the subject matter land belonged to the petitioner. It is further stated that the petitioner and his brother Shri Amrutlal Rupchand Shah were living at the same place and the final statement with respect to the form filled by the brother of the petitioner Shri Amrutlal Rupchand Shah was issued as far back on 20th December 1982 despite which the petitioner has not raised any objection at any of the stages mentioned above. It is stated that no evidence has been produced by the petitioner to show that the said lands belonged to him.

7. In nutshell, on the basis of the above averments, the respondents seek to oppose the petition and support the action of declaration of public auction of the plots in question.

8. Appearing before me, learned advocate Shri JR Nanavati submitted that the petitioner Ramniklal Rupchand Shah had made a declaration under sub-section (1) of 6 of the said Act. In the form filled by the petitioner, plots Nos.12, 13 and 51 were disclosed in which the petitioner had certain share. The brother of the petitioner i.e. Amrutlal Rupchand Shah had also filled in the form under section 6(1) of the said Act and made declaration of his land holding. The said declaration did not include the above plots. It was, therefore, not open for the Authorities to include the said plots in the holding of Amrutlal Rupchand Shah.

8.1 It was further contended that there was sufficient evidence on record to establish that the land in question belonged to the petitioner and not to Amrutlal Rupchand Shah. He submitted that in any case, the petitioner ought to have been given an opportunity to establish his claim. It was contended that while finalising the form of Amrutlal Rupchand Shah, the petitioner had no opportunity to meet with the stand

of the respondents that the petitioner had no right, title or interest over the land in question and only Shri Amrutlal Rupchand Shah exclusively owned the said lands. In this regard, it was further submitted that without finalising the declaration of the petitioner under sub-section (1) of section 6 of the said Act, the Authorities could not have concluded the issue of ownership of the plots in question. It was contended that the petitioner had a right to be heard before his contentions are negatived. In short, it was the case of the petitioner that without discarding the averments made by the petitioner in the declaration made before the Authorities and without giving an opportunity to the petitioner to establish his case before the Authorities, the declaration made by his brother Amrutlal Rupchand Shah could not have been finalised so as to include the above disputed plots of land in the land holding of Shri Amrutlal Rupchand Shah.

8.2 On the above basis, the petition is sought to be sustained. It is contended that when no legal formalities were carried out by the Authorities before issuance of notifications and notices under section 10 of the said Act, the eventual step of having

taking possession of the land in question becomes insignificant. It was, therefore, submitted that the respondent authorities erred in law in seeking to dispose of the land in question by public auction.

9. On the other hand, learned AGP Shri Gori opposed the petition and submitted that the Authorities came to the conclusion on the basis of the available material on record. He submitted that though Amrutlal Rupchand Shah did not declare the disputed lands in his declaration under sub-section (1) of section 6 of the said Act, the same would not preclude the Authorities in carrying out an inquiry into the ownership of the land. He submitted that upon verification of the documentary evidence available on record, it has been established that the land in question belonged to Shri Amrutlal Rupchand Shah and no other person had any right, title or interest over the land. He submitted that a draft statement in this regard was issued under sub-section (3) of section 8 of the said Act which was duly served on Amrutlal Rupchand Shah who raised no objection. Ultimately, therefore, the draft statement was finalised under section 9 of the said Act. After following the procedure as required under section 10

of the said Act, possession of the land in question was taken over by the Government and in fact, later on order was also passed for payment of compensation for the land acquired.

9.1He further submitted that the petitioner has not raised objection at any stage. At the belated stage therefore, the petitioner cannot approach this Curt challenging the action of the Government in seeking to auction the land in question. In short, he requested that the petition be rejected.

10.Having heard the learned advocates for the parties, I had also requested the learned AGP to make available to this Court the original proceedings of the Land Ceiling Cases of the declarations made by the petitioner Ramniklal Rupchand Shah and his brother Amrutlal Rupchand Shah.

11.Learned AGP Shri Gori has made available the original records to the Court. After perusing the record, I have also permitted access thereof to the learned advocate for the petitioner.

12.From the file pertaining to the case of Shri Amrutlal Rupchand Shah, it can be seen that in the declaration made by the said Amrutlal Rupchand Shah, the disputed

lands were not disclosed as part of his holding. However, the Authorities after verifying the position of the records of the lands were of the opinion that the declarant Amrutlal Rupchand Shah is the sole owner of the land in question. Accordingly, a draft statement under sub-section (3) of section 8 of the said Act was prepared and served on Shri Amrutlal Rupchand Shah. No objections were raised in response to the said draft statement dated 6th October, 1982. The same was therefore finalised under section 9 of the said Act by the order dated 20th December 1982. Notification under section 10(1) of the said Act was also issued indicating the intention of the Authorities to eventually take possession of plot Nos.13, 14 and 12 paike of survey No.398 totally admeasuring 1207.08 sq. meters. The same was followed by notification under section 10(3) of the said Act and eventually notice under sub-section (5) of section 10 of the said Act came to be issued. After following the due procedure, the possession of the land in question was taken over by the Government. At none of these stages, the petitioner raised any objection to the State Government proceeding in the above direction.

13.Upon perusal of the original files pertaining to the

case of the petitioner, Shri Ramniklal Rupchand Shah, it can be seen that though in the declaration made by him, he has disclosed the disputed land as part of his holding as one-fourth share holder of the HUF property, he had not produced any supporting documents to establish his right, title or interest in the land in question. A notice was issued to him on 23rd July 1986 calling upon him to clarify the position as regards his declaration of the land disclosed by him and he was called upon to remain present on 4.8.86 with supporting documents. The petitioner responded to the said notice through his advocate and prayed for time on more occasions than one. On several occasions, adjournments were granted as requested by the petitioner. The petitioner, however, did not produce any additional material. On 8.1.88, the Competent Authority once again issued notice on the petitioner indicating that in his declaration he has disclosed as many as 13 properties and that he should remain present before the Authorities on 16.1.88 along with documentary proof with respect to the said properties. Apparently, no further documents were produced by the petitioner.

13.1During the course of the proceedings, the petitioner

made several statements before the Authority. On 6.2.88, he gave a statement clarifying certain declarations made by him in his form. He suggested that some of the disclosures were not quite accurate and that the same is on account of mistake on his part. He made similar statement on oath on the same day i.e. 6.2.88.

13.2 Once again, he gave his statement before the Authorities on 15.6.89 and on 6th May 1993. In his statement dated 6th May 1993, he again reiterated that out of total 13 properties disclosed by him in the declaration, certain properties were shown by mistake and that he has made clarification with respect to the same on 6th February 1988, 15th June 1989 and 3rd September 1989 and that he did not have anything further to say in that regard nor did he wish to produce any further evidence. With respect to plot Nos.12, 13, 14, 23 and 51, however, he stated that the same are HUF properties and he has one-fourth share therein. He, however, conceded that the properties were purchased in the name of his brother and he has no material to show that the same were purchased as HUF property. Along with the said statement, he gave yet another statement also dated 6.5.93 in which he

stated that in the declaration form filed by him he has stated that there is a share of HUF as well as partnership firm which is a mistake on his part. Along with the statement, he also gave an indemnity bond to the authorities for permitting him to transfer land admeasuring 1029 sq. yards under section 26 of the said Act. The petitioner desired to transfer land out of plot No.67 of survey No.4014 of Rajkot. Apparently on the basis of the said indemnity bond, the petitioner was permitted to transfer the said land.

23.2.2006:

14.It can thus be seen that so far as the disputed plots are concerned, though the brother of the petitioner Amrutlal Rupchand Shah had not disclosed the same in his declaration as part of his holding, the Authorities upon verifying the records of the land in question found that Amrutlal Rupchand Shah was the owner of the said land. After issuing a draft statement under sub-section (3) of section 8 of the said Act and serving the same to Amrutlal Rupchand Shah, the Authorities passed the final statement under section 9 of the said Act. This was followed by issuance of notification under section 10(3) of the said Act and notice for possession under sub-section (5) of section 10 of the

said Act. Eventually, possession of the land in question was also taken over in presence of panchas.

15. On the other hand, though the petitioner disclosed in his declaration before the Authorities that the plots in question are of the ownership of the HUF of the petitioner and he has one-fourth share therein as a member of HUF, he had not produced any supporting evidence to substantiate such a claim. Though called upon by the authorities to produce necessary evidence, the petitioner failed to do so. The notice was duly served to the petitioner and as noted earlier, the petitioner sought several adjournments which were granted for the said purpose. The petitioner engaged a legal practitioner to represent him who also sought adjournments and such requests were also granted. The petitioner produced no further evidence in support of his claim. Additionally, I also find that the petitioner had given statements during the inquiry conducted by the Competent Authority pursuant to his declaration and in the statements, the petitioner changed his version from time to time about his land holding and on oath conceded that he had made certain wrong declarations. Of course, with respect to the disputed plots, the petitioner has not stated so before the Authorities. Nevertheless, the fickleness of the

statement of the petitioner can be duly seen from the record.

16. The situation that emerges is that on one hand though the brother of the petitioner Shri Amrutlal Rupchand Shah was shown as owner of the disputed plots in question in the revenue records, he did not include these plots as part of his land holding in the declaration made to the authorities and the petitioner on the other hand declared before the Authorities that he has one-fourth share in the land as member of the HUF though the same was not reflected from the records and no documentary evidence was produced to demonstrate before Authorities that HUF is the owner of the plots in question.

17. Ordinarily, the petitioner would have been justified in contending that before finalising his form and passing final order with respect to the declaration made by him under sub-section (1) of section 6 of the said Act, the Authorities could not have concluded that the land in question belonged to Amrutlal Rupchand Shah and the petitioner has no right, title or interest over the said property. In the facts of the present case, however, such a contention cannot be accepted. There was no material on record even prima facie suggesting any right, title or interest of the petitioner in the

disputed plots. On the other hand, the Authorities on the basis of the record found that the owner of the property is Shri Amrutlal Rupchand Shah i.e. brother of the petitioner though Amrutlal Rupchand Shah had not included these plots in his declaration filed before the Authorities. The Authorities arrived at the said conclusion after giving reasonable opportunity of hearing to Amrutlal Rupchand Shah who raised no objection to such a tentative decision. As a matter of fact, no objection was raised either by Amrutlal Rupchand Shah or by the petitioner when the authorities issued notifications under sub-sections (1) and (3) of section 10 of the said Act. The Authorities have pointed out that the petitioner and his brother were residing at the same address. It is, therefore, difficult to believe that the proceedings pursued by the Authorities in case of Amrutlal Rupchand Shah were not known to the petitioner. Even for the sake of argument the stand of the petitioner that notice of draft statement under sub-section (3) of section 8 of the said Act in the case of Amrutlal Rupchand Shah was served to him and not to the petitioner and that therefore the petitioner did not raise any objection is to be believed, the fact remains that the petitioner could have raised an objection when notification under

sub-section (1) of section 10 of the said Act was issued. It was at this stage the petitioner could have, if he was serious about his stand, sprung into action and pointed out to the authorities that the land so declared as excess vacant land in the hands of Amrutlal Rupchand Shah does not belong to him and that the petitioner has right, title or interest over the said lands. Not only at that stage, but any time thereafter also, the petitioner never raised objection till filing of the present petition opposing the move of the Government to auction the properties having already been acquired from Amrutlal Rupchand Shah after passing the order of payment of compensation under section 11 of the said Act. In the facts of the present case, therefore, I find that the petitioner cannot stand on mere technicalities by suggesting that the entire action of the Authorities must fail simply because the declaration made by him with respect to the disputed plots was not finalised.

18. In the result, I find that the prayers made in the petition cannot granted. The petition is therefore rejected. Rule is discharged with no order as to costs. Interim relief stands vacated. At the request of the learned advocate for the petitioner, this order shall stand stayed till 31st March, 2006.

(Akil Kureshi, J.)

(vjn)